

## **Deferred Deposit Loan Administrative Rules**

**2.59.1501 DEFINITIONS** For the purposes of this subchapter, the following definitions apply:

(1) "Commissioner" means the commissioner of banking and financial institutions provided for in 32-1-211, MCA.

(2) "Department" means the department of administration established in 2-15-1001, MCA, and includes the commissioner of the division of banking and financial institutions and the division of banking and financial institutions.

(3) "Fraud or financial dishonesty or civil judgments involving fraudulent or dishonest financial dealings" means embezzlement, money laundering, identity theft, theft, and other financial related crimes and judgments.

(4) "Manager" means a person employed by a deferred deposit lender as the person responsible for operating the business at the location where the person is employed.

(5) "Monthly net income" means gross salary minus taxes and voluntary deductions. This term includes income from public assistance, child support, alimony, unemployment insurance payments, workers' compensation and other verifiable sources.

**2.59.1502 APPLICATION PROCEDURE REQUIRED TO ENGAGE IN DEPOSIT LENDING** (1) All existing or proposed licensees shall file with the department an application to engage in deferred deposit lending.

(2) An application must be in writing on a form prescribed by the department and verified under oath. Application forms are available from the Division of Banking and Financial Institutions, Department of Administration, 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546.

(3) In addition to any other information that may be required by 31-1-705, MCA, the application shall contain the following information in the application format prescribed by the department:

(a) biographical data concerning the applicant, the applicant's owners, parent company, affiliates, or subsidiaries as specified by the department;

(b) information concerning the applicant's character, experience, qualifications; and

(c) financial information about the applicant.

(4) Except for those entities listed in (5), all persons or lenders must obtain a license under this rule in order to issue deferred deposit loans. Persons or lenders that are licensed under the Consumer Loan Act, 32-5-101, MCA, and the Title Loan Act, 31-1-801, MCA, are not exempt from the licensing requirements of 31-1-701, MCA.

(5) The following are exempt from the licensing requirements:

(a) federal and state chartered banks;

(b) federal and state chartered savings and loans;

(c) federal and state credit unions;

(d) trust companies; and

(e) investment companies.

2.59.1503 UNENCUMBERED ASSETS AS ADDITIONAL SURETY

(1) The statutorily required \$25,000 in unencumbered assets shall serve as additional surety for the licensee's operations. These assets shall remain unencumbered.

2.59.1504 OWNERSHIP CHANGE IN THE DEFERRED DEPOSIT

LENDER (1) In the event there is a change of ownership in a licensee, the owner(s) shall file with the department an application for a new license. For purposes of this rule, a change in ownership includes circumstances when 25% or more of the ownership is transferred to a new owner.

2.59.1505 EXAMINATION OF DEFERRED DEPOSIT LENDERS

(1) The department shall annually conduct an examination of each deferred deposit loan licensee's lending operations to ensure compliance with both statute and administrative rule.

(2) The examination shall consist of a comprehensive review of the records, operations and affairs of the licensee. The review shall include inquiry into:

- (a) accounting and financial records;
- (b) records of the borrower's files including:
  - (i) evidence of required disclosures;
  - (ii) use of a department approved loan agreement; and
  - (iii) assurance of continued capital adequacy and bonding.

2.59.1506 PROCEDURAL RULES FOR HEARINGS AND DISCOVERY

(1) In the case of hearings concerning the issuance, suspension, revocation, or other enforcement actions pertaining to a licensee:

(a) hearings and related discovery shall be done under the Montana Administrative Procedure Act implementing the Revised Attorney General Model Rules effective June 4, 1999.

(2) The department of administration, division of banking and financial institutions, adopts and incorporates by reference the Attorney General's Model Rules effective June 4, 1999 as found in ARM 1.3.101 through 1.3.233, along with the accompanying forms. A copy of the attorney general's rules may be obtained from the Division of Banking and Financial Institutions, Department of Administration at 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546.

2.59.1507 REPORTS (1) The following must be reported to the

department:

- (a) any instances of theft from the deferred deposit loan business within ten days of discovery of the theft;
- (b) any change in managers within ten days of each occurrence; and
- (c) all officer questionnaires must be answered within ten days of the end of any examination.

2.59.1508 SCHEDULE OF CHARGES (1) Every licensee under the Montana Deferred Deposit Loan Act shall file with the commissioner in duplicate, at the time of filing application for such license or license renewal, a full and accurate schedule of all charges, fees, and costs as follows:

- (a) interest rate;
  - (b) nonsufficient fund fees; and
  - (c) examples of typical loan amounts including principal, interest, and fees.
- (2) Licensees shall display such schedule prominently in each licensed place of business where loans are made or negotiated so as to be easily readable by borrowers and prospective borrowers.

2.59.1510 EMPLOYEES' CHARACTER AND FITNESS (1) Licensees are responsible for conducting appropriate background checks on new employees hired after July 1, 2006. At a minimum, each licensee shall:

- (a) require completion of employee criminal background questionnaire;
- (b) verify and document employment and personal references; and
- (c) within ten days of start of employment, request a Montana criminal records check from the Montana Department of Justice.

(2) If the background check demonstrates any criminal convictions involving fraud or financial dishonesty or civil judgments involving fraudulent or dishonest financial dealings, the licensee cannot employ such person, or if already employed, must terminate employment.

(3) Verification of compliance with this rule shall occur during annual exams. Licensees are required to keep accurate employment records on each employee to ensure that the department is able to verify compliance.

(4) A criminal records check conducted by another agency or private company may be used by licensees as a substitute for the records check by the Montana Department of Justice as long as the information provided by the substitute records check contains the same information as the check conducted by the Montana Department of Justice.

2.59.1512 ELECTRONIC DEDUCTIONS (1) An electronic deduction for nonsufficient funds may be authorized by the borrower only on the original loan agreement.

(2) An electronic deduction for nonsufficient funds shall be separate and apart from an electronic deduction for the amount of the loan, interest, or any fees. (3) An electronic deduction for nonsufficient funds authorized by the borrower under (1) may not be presented to the borrower's financial institution until the licensee has presented the check for payment.

2.59.1513 INCOME VERIFICATION (1) Licensees shall verify a borrower's income prior to issuing any deferred deposit loan.

(2) Verification of income shall be in a form of most recent pay stubs for employment, or other official documents for public assistance, child support, alimony, unemployment insurance, and workers' compensation.